



MINNESOTA COUNTIES INSURANCE TRUST

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Renial

June 8, 2005

Stephen F. Rufer
Pemberton, Sorlie, Rufer & Kershner PLLP
110 North Mill Street
P O Box 866
Fergus Falls, MN 56538-0866

Re: **Barlow Projects, Inc.**
Member: **Ottertail County**
File: 102GL0407950 JS
Member: **Todd County**
File: 102GL0508073 JS
Member: **Wadena County**
File: 102GL0508074 JS
Your File: 2004-4104

Dear Mr. Rufer:

As the attorney for the referenced Counties of Otter Tail, Todd, and Wadena, you have forwarded the **Answer and Counterclaim of Barlow Projects, Inc. with respect to Civil Action No. 04-CV-4218 ADM/RLE.**

For the purpose of this communication I will refer to your clients as "the Counties" and Barlow Projects, Inc. as "Barlow". From a review of the documents you have forwarded we understand the issues in this matter relate to a number of contracts between Barlow and the City of Perham, Barlow and Otter Tail County and the Counties and the City of Perham, all with respect to Barlow's design, modification and operation of the QRR Facility located in the City of Perham. The Counties contractually agreed with the City of Perham to deliver municipal waste to the QRR Facility and to undertake the general obligation pay an agreed share of debt service payments on bonds issued to pay the cost of retrofitting the QRR Facility. Due to alleged problems with the QRR Facility and its operation, the Counties commenced suit against Barlow some time during late 2004. The suit contains allegations of misrepresentation, omissions, breach of fiduciary duty, engineering malpractice and breach of contract.

EXHIBIT J

Stephen F. Rufer
June 8, 2005
Page 2

In Barlow's counterclaim they, among other things, charge the Counties with tortious interference with contract and civil conspiracy or that the Counties "actively and/or tacitly conspired with each other and with the City to deprive Barlow of its rights under its agreements with the City and Barlow's relationship with its employees". In other words as you have stated, basically Barlow is claiming that the Counties conspired with, or strong armed the City into breaching contracts with Barlow.

On June 6' 2005 I conveyed to your associate, Kristi Hastings, that we were disclaiming coverage for this claim and that I would be sending this letter setting forth the reason for the disclaimer. As the counterclaim is dated May 23, 2005 I will refer to the 2005 Coverage Document as follows:

SECTION IV. GENERAL EXCLUSIONS

Applicable to all Liability Coverages, the Coverage provided does not apply to:

C. Contractual Penalties, Breach of Contract

Any "Claim" based upon breach of contract or other obligation, including an obligation arising out of a written agreement creating an obligation on behalf of a "Member" to another person or entity. This clause specifically excludes any coverage for "Damages" or "Claim Expenses" based upon, caused by or arising from, breach of contract, cost estimate overruns on any contract or project, or any penalties for failure to comply with a contractual obligation or other duties assumed as a result of a written agreement.

Our position is based upon the facts as presented to us. MCIT further asserts and does not waive any of the conditions, definitions or exclusions in the Coverage Documents.

This decision is made pursuant to the authority of the MCIT Board of Directors. If you disagree with the basis of the decision outlined above, written request for review must be made to the MCIT Board of Directors within 21 calendar days of the date of this correspondence. The Notice of Appeal must contain the following:

Stephen F. Rufer
June 8, 2005
Page 3

- 1) *Identification of the decision being appealed.*
- 2) *A statement of the issue(s) for the Board's consideration, including copies of all documents, letters and other items relevant to the appeal.*
- 3) *A summary of the position and arguments of the Member.*
- 4) *The anticipated length of the hearing including a list of all witnesses and presenters to be utilized by the Member at the hearing.*

Your request should be directed to Robyn M. Sykes, MCIT Executive Director, 100 Empire Drive, Suite 100, St. Paul, MN 55103-1885.

Sincerely,

John Stein
Senior Claims Representative
Toll Free: 866-547-6516 ext. 6429
Phone: 651-209-6429

cc:

Kim Chapman, MCIT

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